

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

GEORGE EMFINGER,

Plaintiff,

vs.

MR. JOE, et al.,

Defendants.

CV 18-00081-BLG-SPW-TJC

FINDINGS AND RECOMMENDATIONS OF
UNITED STATES MAGISTRATE JUDGE

Plaintiff George Emfinger filed a Complaint and a series of subsequent filings. (Docs. 2, 5-8.) The filings were nearly incomprehensible, and on April 5, 2019 the Court issued an Order finding that the filings failed to state a federal claim upon which relief may be granted. Mr. Emfinger was given until May 6, 2019 to file an amended complaint. He was specifically advised that a failure to do so would result in a recommendation that the matter be dismissed for failure to state a claim. (Doc. 9.) The Court's April 5, 2019 Order was returned as undeliverable on April 25, 2019. (Doc. 10.)

The Local Rules for the District of Montana provide:

- (b) Dismissal Due to Failure to Notify. The court may dismiss a complaint without prejudice or strike an answer when:
 - (1) a document directed to the attorney or self-represented party by the court has been returned to the court as not

- deliverable; and
- (2) the court fails to receive within 60 days of this return a written communication from the attorney or self-represented party indicating a current address for service.

L.R. 5.3(b).

Mr. Emfinger was advised in the Court's May 10, 2018 Notice of Case Opening (Doc. 3 at 2) that he must immediately inform the Clerk of Court of any change in his address, and a failure to do so could result in dismissal of his case. It has been more than 60 days since the return of written communication from the Court addressed to Mr. Emfinger's address of record, and Mr. Emfinger has not filed a notice of change of address.

ACCORDINGLY, IT IS HEREBY RECOMMENDED that this action be DISMISSED for failure to state a claim for the reasons set forth in the Court April 5, 2019 Order (Doc. 9) and for failure to comply with Local Rule 5.3(b).

**NOTICE OF RIGHT TO OBJECT TO FINDINGS &
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

Mr. Emfinger may file objections to these Findings and Recommendations within fourteen (14) days after service (mailing) hereof.¹ 28 U.S.C. § 636. Failure

¹Rule 6(d) of the Federal Rules of Civil Procedure provides that "[w]hen a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail) . . . 3 days are added after the period would otherwise expire under Rule 6(a)." Therefore, since Mr. Emfinger is being served by mail, he

to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 25th day of June, 2019.

A handwritten signature in black ink, appearing to read 'Timothy J. Cavan', is written above a horizontal line.

Timothy J. Cavan
United States Magistrate Judge

is entitled an additional three (3) days after the period would otherwise expire.